Dear Commissioner Walpert:

Attached hereto are comments prepared by Columbia Law School’s Center for Gender & Sexuality Law and Queers for Economic Justice on the proposed amendments to Rules Governing City-Aided Limited-Profit Housing Companies.

The Center for Gender & Sexuality Law and Queers for Economic Justice strongly urge HPD to reject the proposed rule change that would substitute the term spouse for the broad definition of family member that has been contained in the code for over twenty years.

Sincerely,

Katherine M. Franke
Comments by Columbia Law School’s Center for Gender & Sexuality Law and Queers for Economic Justice on the proposed Amendments to Rules Governing City-Aided Limited-Profit Housing Companies
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November 6, 2013

Columbia Law School’s Center for Gender & Sexuality Law (the Center) is the first and most established academic center in the United States specializing in teaching and research on a wide range of legal and policy-based issues relating to gender and sexuality. The Center serves as a catalyst for policy development and research on a diversity of issues including family law; lesbian, gay, bisexual, transgender, and queer rights; reproductive rights; criminal law; economic justice; constitutional law; and international human rights.

Queers for Economic Justice (QEJ) is a progressive non-profit organization committed to promoting economic justice in a context of sexual and gender liberation. QEJ is committed to the principle that access to social and economic resources is a fundamental right, and it works to create social and economic equity through grassroots organizing, public education, advocacy and research.

By notice dated October 4, 2013, RuthAnne Visnauskas, Commissioner of the New York City Department of Housing Preservation and Development (HPD), announced a proposal rule change that would, inter alia, substitute “spouse” for the broad definition of family member currently contained in the rules governing rights of succession to residential properties subject to the City’s Mitchell-Lama program.

The Center for Gender & Sexuality Law at Columbia Law School and Queers for Economic Justice strongly oppose the proposed change in the definition of “family member” insofar as the current broad definition has worked well for over twenty years. The proposed amendment narrowing the definition of “family member” is not justified by any change in law or policy related to persons otherwise eligible for succession rights to Mitchell-Lama properties, nor has the broad diversity of family forms present in New York City changed in such a way as to justify the regression to such a narrow interpretation of family.

I. The Proposed Rule Change Runs Contrary To Established New York State Law Requiring The Recognition Of A Broad Range Of Families And Partnerships

HPD’s current definition of “family member” recognizes the range of family forms to be found in a city as culturally diverse as New York. It embraces a conception of “family member” that turns on the nature and quality of the relationship and the emotional and economic interdependency of the parties, not a formulaic or facile resort to a narrow legal status. As such, the current regulations define “family member” sensibly and functionally as:
(B) Any other person residing with the tenant/cooperator in the apartment as a primary residence who can prove emotional and financial commitment and interdependence between such person and the tenant/cooperator. Although no single factor shall be determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed shall be the income affidavit filed by the tenant/cooperator for the apartment and other evidence which may include, without limitation, the following factors:

(a) longevity of the relationship;
(b) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;
(c) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;
(d) engaging in family activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;
(e) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, registering a domestic partnership pursuant to Executive Order No. 48, dated January 7, 1993 or Local Law No. 27 of 1998, serving as a representative payee for purposes of public benefits, or other such formalizations;
(f) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;
(g) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;
(h) engaging in other patterns of behavior, or other action which evidences the intention of creating a long-term, emotionally committed relationship. In no event shall evidence of a sexual relationship between such persons be required or considered.

In no event shall evidence of a sexual relationship between such persons be required or considered.¹

The inclusion of a broad conception of “family member” in the Mitchell-Lama regulations was the product of an incremental evolution in New York law starting in the early 1970s that considered the housing contexts where the definition of family was at issue. This evolution culminated in the late 1980s in a consensus that the terms “family” or “family member” must be construed to include both traditional and non-traditional families.

The first context in which this mandate was established was with respect to zoning regulations that excluded from the term “single-family house” groups of people who lived in non-traditional households. In *City of White Plains v. Ferraioli* the New York Court of Appeals rejected a local government’s position that a married couple living with two biological children and 10 foster children did not qualify as a “single family” dwelling under the local zoning ordinance. The court found that a requirement that the relationships in a family unit be those of blood or adoption was too restrictive. Further, the court reasoned.

an ordinance may restrict a residential zone to occupancy by stable families occupying single-family homes, but neither by express provision nor construction may it limit the definition of family to exclude a household which in every but a biological sense is a single family. The minimal arrangement to meet the test of a zoning provision, as this one, is a group headed by a householder caring for a reasonable number of children as one would be likely to find in a biologically unitary family.³

The court found that so long as a group home bears the generic character of a family unit, it conforms to the purpose of the ordinance.⁴

In *McMinn v. Oyster Bay* the New York Court of Appeals considered the criminal prosecution of a homeowner who had rented out his home to four, young, unrelated men, purportedly in violation of the local residential zoning ordinance restricting occupancy in single-family houses to persons related by blood, marriage or adoption (unless over 62). Building on *Ferraioli* and *Group House*, the court, without dissent, struck down the zoning ordinance as infringing upon the due process protections of the New York State Constitution. The Court in *McMinn* found that “if a household is ‘the functional and factual equivalent of a natural family’ … the ordinance may not exclude it from a single-family neighborhood and still serve a valid purpose.”⁶

The finding in the zoning context that the New York constitution requires a recognition of functional families and the integrity of non-marital relationships in addition to those that are constituted by blood or law was extended by lower New York courts to protections against eviction from rental housing in a line of cases starting with *Zimmerman v. Burton* where the court found that the landlord could not evict from a rent controlled apartment a man who had lived with the female tenant as her long-term unmarried partner for over 20 years. The rent

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² 34 N.Y.2d 300 (N.Y 1974).
³ 34 N.Y.2d at 306.
⁴ *Accord Group House of Port Washington v. Board of Zoning & Appeals of Town of N. Hempstead*, 45 N.Y.2d 266, 271 (1978) (“the ‘group home’ as described by petitioner before the commissioner and the board cannot be distinguished from a ‘natural’ family.”).
⁵ 66 N.Y.2d 544 (N.Y. 1985).
⁶ 66 N.Y.2d at 551.
control law would have prohibited the eviction of the surviving spouse of the named tenant, and with respect to the tenancy rights of the surviving life partner the court observed that “[t]he law must keep abreast of changing moral standards,” and it should recognize that it was increasingly common for couples to live openly in unmarried relationships. Concluding that the surviving partner should retain legal possession of the apartment Judge Taylor held that “[t]he quality of his relationship with Ms. Tetreault, and the quantity of time they spent together in a close and loving relationship is such that it would be unfair and discriminatory to evict him because he lacks a marriage license.”

New York courts’ acknowledgment of the tenancy rights of family members who are unrelated to the named tenant through blood or marriage ripened in 2–4 Realty Assocs. v. Pittman. In Pittman the landlord sought to evict from a rent-controlled apartment a man, Jimmie Hendrix, who, along with his mother, had lived with the named tenant, Henry Pittman, for over 25 years. None of the parties were in a sexual relationship with the named tenant, but rather the testimony established that Mr. Pittman considered Mr. Hendrix to be “like a son” to him. The court found that the three of them had “lived together as a family, and specifically that Jimmie was the equivalent of Henry Pittman’s son, albeit never formally adopted”. The court then concluded that “it would be irrational and violative of the respondent’s due process rights for the regulations to be read in such a restrictive manner. It would be irrational particularly where it is clear that Jimmie for so many years served Henry Pittman as a devoted son. This relationship is precisely what the State and city in enacting these regulations meant to define, value, and encourage.” In so finding the court explicitly linked the issue at stake in the rental housing context to the definition of “single family” dwelling in the aforementioned zoning cases.

Pittman marked an important landmark in the recognition of a diversity of families living in housing governed by New York City law by extending the recognition of non-traditional families beyond the context of unmarried romantic partnerships.

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8 Id. at 128
9 Id. at 129. In so ruling the judge relied on the reasoning in Rutar Co. v. Yoshito, No. 53042/79 (N.Y. Civ. Ct. 1979) (holding that in the context of unmarried heterosexual life partners, “[a]lthough cohabitation for 33 years does not constitute common-law marriage in New York, cohabitation for a number of years cannot be distinguished from marriage for all purposes. Section 56(d) of the New York City Rent Regulations provides that family members of a tenant may not be removed from their homes in rent-controlled apartments upon death of the tenant. The rationale for that rule does not permit a distinction to be made between a bereaved respondent and a widower with a marriage certificate.”). See also Gelman v. Castaneda, NYLJ, Oct. 22, 1986, at 13, col. 1 (N.Y. Civ. Ct. 1986) (unmarried homosexual life partners).
11 Id. at 12.
12 Id. at 12–13.
13 Id. at 11–13.
This line of cases culminated in *Braschi v. Stahl Associates Co.*\(^{14}\) where the New York Court of Appeals considered whether Miguel Braschi, the life partner of the named tenant of an apartment subject to the New York City Rent Control Law, could legally remain in the apartment after the named tenant’s death. The New York City Rent and Eviction Regulations provided that upon the death of a rent-control tenant, the landlord may not dispossess “either the surviving spouse of the deceased tenant or some other member of the deceased tenant’s family who has been living with the tenant.”\(^{15}\) The court was asked to determine the meaning of the term “family” as it is used in the rent control context, and found that Mr. Braschi and his partner Leslie Blanchard were indeed “family” within the meaning of the rent control regulations. In so finding the court looked to factors such as “the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which the parties have conducted their everyday lives and held themselves out to society, and the reliance placed upon one another for daily family services”.\(^{16}\) The court explained that “[t]hese factors are most helpful, although it should be emphasized that the presence or absence of one or more of them is not dispositive since it is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control.”\(^{17}\) In identifying these factors as important in considering whether two or more people could be considered “family” for the purpose of the rent control regulations the court acknowledged prior cases involved unmarried heterosexual couples (*Zimmerman* and *Yoshito*), unmarried homosexual couples (*Gelman*), and two men who had lived together “as father and son” although they were not related by blood or adoption (*Pittman*).

The criteria enumerated by the Court of Appeals in the *Braschi* decision formed the basis for the definition of “family member” contained in the Mitchell-Lama regulations that HPD now proposes to eliminate. Nothing has changed in either the law or the forms of family that New Yorkers form that would justify the radical change and narrowing of the definition of “family member” contained in the HPD’s proposed amendment. In fact, less than a month ago the New York Court of Appeals affirmed the ongoing importance of the “Braschi factors” used in defining “family members” in the Mitchell-Lama regulations.\(^{18}\)

\(^{14}\) 74 N.Y.2d 201 (N.Y. 1989).
\(^{15}\) 9 NYCRR 2204.6(d)
\(^{16}\) 74 N.Y.2d at 212-213.
\(^{17}\) *Id.* at 213.
\(^{18}\) *Murphy v. DHCR*, --N.E.2d-- , 2013 WL 5637985 (N.Y. Oct. 17, 2013)(“Regulations providing for succession rights to Mitchell–Lama apartments serve the important remedial purpose of preventing dislocation of long-term residents due to the vacatur of the head of household (see Notices of Emergency/Proposed Rule Making, NYS Register, Nov. 29, 1989, at 23–29). Succession is in the spirit of the statutory scheme, whose goal is to facilitate the availability of affordable housing for low-income residents and to temper the harsh consequences of the death or departure of a tenant for their “traditional” and “non-traditional” family members (see *Braschi v. Stahl Assoc. Co.*, 74 N.Y.2d 201 (N.Y. 1989); see also Rent Stabilization Assn. of
Well-settled New York case law has established that property interests, such as those created by the Mitchell-Lama law, that are afforded to “family members” should be determined not by reference to a state licensing scheme, such as civil marriage, because granting such rights only to families who qualify for and have received state licensing as legal spouses is an underinclusive means by which to recognize “family membership” as a constitutional matter. Rather, the courts have been clear that “family membership” should be determined by a set of functional factors that may include but cannot be limited to relation established by blood, marriage or adoption.

We are well beyond the day when a public entity can limit access to a program such as the Mitchell-Lama program with such a narrowly defined conception of family, especially when a functional definition of family member has been found workable for almost a quarter century. The proposed amendment’s limitation in the ability to gain or retain access to Mitchell-Lama housing rights marks a step backward in the well-accepted recognition of a broad diversity of families in New York City.

II. Scores Of Existing Non-Traditional Families Will Be Negatively Affected By The Proposed Rule Change

The 2010 census shows that New York remains a city characterized by broad diversity in its population, including in the kinds of families and households that New Yorkers have created. Out of 3,109,784 households counted in New York City by the 2010 census, only 35% of the total households (1,097,870) were made up of married-couple families. Forty percent of the total households (1,259,563) were comprised by members who were not related by birth, marriage or adoption, and 2% reported being unmarried partners (201,032). Nineteen percent of total households were headed by a woman where “no husband was present” (581,745), but this figure does not include the number of households where a female householder lives with a partner to whom she is not married. These numbers are surely even higher for households headed by African American women insofar as African American women are half as likely as white women to be married, and twice as likely never to marry. Given the enduring stigma associated with non-traditional families and partnerships, these data most assuredly underrepresent the number of non-traditional families and households in the City. What is more, research has shown that middle and lower income people – the constituency the Mitchell-Lama program targets – tend to

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*New York City v. Higgins, 83 N.Y.2d 156 (N.Y. 1993)).”*


20 RALPH RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE?: HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE (2011).
form a higher proportion of non-traditional families than do more affluent people. The proposed amendments, thus, threaten to eliminate scores of eligible families for Mitchell-Lama housing.

III. New York City’s Domestic Partnership Law Reinforces The Importance Of Recognizing Diverse Family Forms

The use of the term “family member” in the Mitchell-Lama regulations was meant to serve the “important remedial purpose of preventing dislocation of long-term residents due to the vacatur of the head of household” and “to facilitate the availability of affordable housing for low-income residents and to temper the harsh consequences of the death or departure of a tenant for their “traditional” and “non-traditional” family members.” The critical remedial and equitable purposes that are operationalized through the functional definition of “family member” in the current regulations reflect a policy judgment made by City officials, both Democrat and Republican alike, dating back almost a quarter century to recognize the integrity of non-traditional families. In 1989 Mayor Koch signed the first executive order granting recognition of employment rights to City employees in both same- and different-sex domestic partnerships. In 1993 Mayor Dinkins issued an executive order setting up a registry for same- and different-sex domestic partners. Then in 1998 Mayor Giuliani signed legislation establishing a domestic partner registration system and expanding the range of rights and forms of recognition that would be extended to domestic partners on terms equivalent to those enjoyed by legal spouses.

The City’s domestic partner registration system remains in place today, and its ongoing importance is not affected by the reform of New York State law in 2011 extending marriage rights to same-sex couples, or the Supreme Court’s finding in United States v. Windsor in 2013.

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22 Murphy, supra note 16.
23 Id.
that the U.S. Constitution does not permit the federal government to deny rights to legally married same-sex persons that it affords to legally married different-sex persons.

There has been no move contemplated to repeal the City’s domestic partnership law in the aftermath of the recognition of the rights of married same-sex couples because the domestic partnership law creates a registry regime parallel to civil marriage and independent of a civil marriage license. Just as the City’s marriage and domestic partnership regimes serve a continuing and important purpose for both traditional and non-traditional families and partnerships, so too the Mitchell-Lama program should continue to recognize the compelling and important needs of both traditional and non-traditional family members when it comes to property rights secured under the program’s definition of “family member”.

IV. Recent Changes In The Recognition Of Same-Sex Couples’ Right To Marry Do Not Affect The Need To Recognize Domestic Partnership And Other Non-Marital Families

As a matter of law and policy neither the Supreme Court’s decision in *U.S. v. Windsor* (finding that the federal government cannot discriminate against legally married same-sex couples) nor the U.S. Treasury Department’s decision post-*Windsor* to treat all married couples, whether same-sex or different-sex, the same for federal tax purposes, require or justify the non-recognition of non-marital family forms. Indeed it would be a corruption of the aims of the same-sex marriage equality movement to read their victories as inviting or requiring the rule changes proposed by HPD. Surely HPD should recognize the same-sex spouses of gay or lesbian New Yorkers on the same terms it recognizes the different-sex spouses of heterosexual New Yorkers. That said, the broad definition of family contained in the Mitchell-Lama regulations for over twenty years were never intended to be a consolation prize for same-sex couples’ inability to marry - rather they were a more capacious acknowledgment of the multiple forms of family we find in our communities. Gains in the right to marry for same-sex couples should not entail a contraction in the rights enjoyed by New York City residents – whether gay or straight – who have formed other non-marital partnerships and families.

The proposed change in HPD’s definition of family may have been motivated by a mistaken reading of the changes ushered in by *Windsor* and the federal tax ruling: these advances in civil rights should not be situated within a zero-sum approach to what it means to be family such that recognizing the marriages of lesbian and gay employees requires the non-recognition of domestic partnerships or other non-traditional families in New York, some of whom do not or cannot marry. To be frank, it is wrong-headed for the City to collapse the right to marry into a requirement that people must marry in order to gain or retain benefits for their partners.

There are many reasons why some New Yorkers may not want to marry, and being forced to marry in order to receive/retain rights under the Mitchell-Lama program may create significant hardships for them. These hardships may include:
• Legally assuming the debts of your spouse, a necessary consequence of becoming legal spouses and one legal/economic unit;
• Adverse consequences for those from cultures, religions, or traditions in which such a marriage would lead to familial rupture or persecution;
• Future discrimination and harassment for a mobile population. New Yorkers who are forced or coerced to marry in order to gain or retain rights under the Mitchell-Lama program can anticipate discrimination and harassment if they move to or visit another part of the state, country, or globe that is less tolerant of interfaith or interracial marriages, same-sex couples marrying, or of homosexuality more generally. In a range of contexts from employment, to visa applications, to hotel registration parties are asked to disclose their marital status and would expose themselves to foreseeable discrimination, harassment and even violence upon doing so.
• Highly unfavorable consequences for partners who have undertaken complex legal and financial planning to structure their non-marital partnerships (both while they are alive and as part of their estate planning) which cannot be easily unwound if the couple were forced to marry. Marriage would create significant legal and economic consequences (tax consequences in particular) were their partnerships transitioned to governance by the laws of marriage.

V. The Proposed Changes Limiting Property Interests Secured Under the Mitchell-Lama Law and Regulations Amount to a Form of Marital Status Discrimination

The limiting of property interests secured by the Mitchell-Lama law and regulations to spouses who are civilly married writes into the law a form of marital status discrimination not currently found in the law and regulations.

The New York State legislature has expressed strong disapproval of discrimination in housing based upon marital status, by enacting a statute specifically designated to remedy such discrimination:

It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or any other person having the right to sell, rent or lease a housing accommodation … (2) To discriminate against any person because of his … marital status in the terms, conditions, or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.\(^\text{28}\)

The New York City Council has similarly condemned housing policy that differentiates between those who have married and those who have not:

\(^{28}\) N.Y. EXEC. LAW § 296(5)(a) (McKinney 2010).
It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or any other person having the right to see, rent or lease a housing accommodation ... (2) To discriminate against any person because of such person’s ... marital status ... in the terms, conditions, or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.  

These state and local anti-discrimination laws express the compelling policy judgment that the right to gain or retain a property interest cannot turn upon one’s capacity or willingness to marry. New York courts have repeatedly affirmed this reading of New York’s marital status discrimination prohibitions in the housing context. In Munroe v. 344 East 76th Realty Corp., the court found that a landlord could not evict a tenant on the ground that she was living in the apartment with a man to whom she was not married. Even though the lease signed by the tenant stated that only she and her spouse and children might use the apartment, the court explained that the landlord was prohibited by the marital status discrimination protections of state law from evicting her or refusing to renew her lease simply because she was living with a man to whom she was not married. Similarly, in Yorkshire House Associates v. Lulkin, a woman had lived for three years in an apartment that was leased by the man with whom she was living but to whom she was not married. The lease forbade occupancy of the apartment by persons other than the lessee’s immediate family without the landlord’s consent. When the man moved out, the landlord attempted to evict the woman, stating that it would not have rented the apartment to the couple if it had known that they were not married. The court stated that it is well settled that if the couple had been married and subsequently became separated, the woman would have been allowed to remain in the apartment even if she had not signed the lease, and concluded that it was clearly discriminatory for the landlord to evict the woman solely because she was not married to the male tenant. The court also noted that landlords cannot ignore and refuse to accord legitimacy to couples living together without the formality of marriage, and indicated that such non-marital relationships should be accorded the same treatment as marital relationships.

Courts in other states have similarly interpreted their state laws prohibiting marital status discrimination in housing to prohibit the granting of a preference to tenants or purchasers who are married over those who cohabitate in long-term non-marital partnerships.

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29 N.Y.C. ADMIN. CODE § 8-107(5).
32 The New York Court of Appeals decision in Braschi, supra note 13, clearly invalidated earlier courts’ more narrow readings of the marital status discrimination protections contained in state and local law, such as in Hudson View Properties v. Weiss, 450 N.E.2d 234 (1983).
The proposed amendments to the Mitchell-Lama regulations will write into law a form of marital status discrimination insofar as they create a distinction between tenant/cooperators who are legally married and those who are living in non-marital partnerships, the former retaining property interests under the law and the latter losing those interests. The current regulations recognize substantial property interests of non-marital partners and family members of tenants/cooperators, and the proposed amendments threaten to extinguish those rights on account of their marital status. State and City law prohibiting marital status discrimination in housing could not be clearer in prohibiting this kind of change which withdraws recognition of non-marital partners while recognizing the rights and interests only of those couples who legally marry.

A public entity cannot set up a regime by which the extent of tenants/cooperators’ rights turn on their marital status, just as it would be illegitimate for the Mitchell-Lama program to determine the extent of tenants/cooperators’ rights based on their race, sex, religion, sexual orientation or other criteria made suspect by state and local law.

VI. The Proposed Rule Change Burdens the Exercise of the Fundamental Right to Marry

Not only do the proposed amendments to the Mitchell-Lama regulations create a manifest form of marital status discrimination. Of equal if not perhaps greater concern, the Mitchell-Lama regulations effectively coerce present and future tenants/cooperators to marry in order to secure their family members’ property interests. In the absence of a compelling state interest, the state may not condition state-created property interests on the coerced exercise of a fundamental right.\(^3\)\(^4\) No such compelling state interest is to be found in this case, and a less onerous alternative by which the Mitchell-Lama program can define family member is found in the current regulations. These regulations have worked well for years and there exists no compelling justification for their elimination in the proposed amendments.

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\(^3\) P.3d 937 (Alaska 2004).

The U.S. Supreme Court has been clear that fundamental liberty rights are at stake in the choice of how to arrange one’s intimate life, including the decision of whether to formalize one’s relationship through marriage: “our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, and education.” As such, the state may not condition the granting of a public benefit on the exercise or forbearance of a fundamental right. For example, a governmental agency may not condition the granting of public benefits to those applicants who agree to speak favorably about a matter of public concern or, in the alternative, agree to refrain from critical speech about that matter. In this case, the program would be imposing an unconstitutional condition on otherwise eligible applicants by burdening their right to free speech as a condition of receiving those benefits. So too, a public school may not condition the hiring of a female employee on the condition that she foreswear the use of contraceptives or, in the alternative, insist that she use contraceptives. In this case, the school district would be imposing an unconstitutional condition on otherwise qualified teachers by burdening their fundamental right to contraception and procreation. If we were to change this last scenario slightly and imagine a public school that required teachers to marry their long-term partners with whom they reside, or, in the alternative, prohibit them from marrying their partners, it would be clear that the school district would be imposing an unconstitutional condition on otherwise qualified teachers by burdening their fundamental liberty to marry.

As such, the proposed amendments to the Mitchell-Lama regulations, conditioning the recognition of property interests under the program upon tenants/cooperators’ willingness to marry their partners, imposes an unconstitutional condition upon otherwise eligible persons by burdening their constitutional liberty interest in deciding whether to marry.

Conclusion

For these reasons, Columbia Law School’s Center for Gender & Sexuality Law and Queers for Economic Justice urge HPD to withdraw the proposed amendments to the Mitchell-Lama regulations.